

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3480 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

BABUBHAI P SINGROTIA

Versus

MUNICIPAL COMMISSIONER

Appearance:

MR SHALIN MEHTA for Petitioner

MR S TRIPATHY for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/07/1999

ORAL JUDGEMENT

In this petition under Articles 226 of the Constitution, the petitioner has challenged the decision as communicated in the letter dated 18.8.1990 (Annexure "E") of the respondent-Corporation rejecting the petitioner's application for compassionate appointment.

2. The petitioner's father was an employee of the

respondent-Ahmedabad Municipal Corporation and was serving as a Ward Servant in the Infectious Hospital, Behrampura, owned and run by the respondent-Corporation. While in service, the petitioner's father expired on 7.11.1988 leaving behind him his wife Smt. Savitaben and two sons - the petitioner's elder brother Govindbhai and the petitioner himself. In view of the policy of the State Government which is also accepted by the respondent-Corporation, for giving compassionate appointment to the dependents of the deceased employee, the petitioner submitted an application for such compassionate appointment. The respondent-Corporation through its Welfare Officer rejected the petitioner's application by decision dated 18.8.1990 (Annexure "E").

It is the aforesaid decision which is challenged in the present petition under Article 226 of the Constitution.

3. The petition was admitted as far back as in February, 1992, but there is no affidavit in reply. The Court, therefore, proceeds on the basis that the averments made in the petition are not disputed by the respondent.

4. At the hearing of this petition, the learned counsel for the petitioner has pointed out from the averments made in the petition to the effect that the petitioner's father died on 7.11.1988 and within less than two months, the petitioner's mother remarried and left the house of the petitioner's father and stays with her present husband. As the petitioner's mother remarried and left the petitioner, it cannot be said that she is in the petitioner's family and since she is an earning member, the petitioner could not be given appointment. Such a narrow construction put by the respondent-Corporation would defeat the very purpose of giving appointment to the dependent of the deceased employee on compassionate ground. In fact, clause 4 of the regulations made by the respondent-Corporation clearly provides that at the time of the death of the employee if his wife is earning and after such employee's death she remarries, the son is entitled to appointment on compassionate ground. It is ridiculous to think that the wife would remarry on the same day on which her husband dies. There is bound to be some interval of time between the death of the husband and remarriage of the wife. Simply because the wife remarried shortly after the death of her husband, the petitioner cannot be deprived of the benefit of the compassionate appointment on the ground that at the time of death of petitioner's

father, his mother was staying with the petitioner's father and she was an earning member.

The learned counsel for the petitioner has further pointed out from the memo of the petition that the petitioner's elder brother has been staying separately for the last more than 15 to 20 years and he is not contributing anything to the family. It is submitted by the learned counsel for the petitioner that the petitioner is the only dependent of the deceased employee. The petitioner has no regular job and he has to do casual work to eke out his living, but his average monthly income does not exceed Rs.200/- because of uncertainty and intermittent availability of casual work.

The learned counsel for the petitioner further points out from the memo of the petition that pursuant to the petitioner's application for compassionate appointment, the respondent had got inquiries made about the petitioner's indigent circumstances as well as the petitioner's entitlement and eligibility for availment of the benefit of such compassionate appointment and such inquiry revealed that the petitioner was indigent, but the petitioner's application came to be rejected on the ground that the petitioner's case did not fall within the administrator's resolution. A copy of the said resolution dated 2.12.1975 is produced at Annexure "F" to the petition. Reliance is also placed on the norms for compassionate appointment as prepared by the Industrial Relations Department of the respondent Corporation on 31.7.1990/1.8.1990 at Annexure "G" to the petition. It is submitted that the petitioner's case was squarely covered by the aforesaid norms, particularly Norm No. 5. In Annexure "G" Norm No. 4 states that if the employee expires and at the time of the employee's death, the wife is employed but she remarries after the death of the employee, the sons can be employed. Similarly, Norm No. 5 states that at the time of employee's death, his wife is employed but she remarries and the elder son is employed, if such elder son is residing with the applicant, the applicant would not be entitled to get compassionate appointment. But if the elder son is residing separately, the applicant would be entitled to get compassionate appointment. It is submitted that the administrator's resolution 2.12.1975 is required to be read in light of the aforesaid norms at Annexure "G".

5. Having heard the learned counsel and considering the administrator's resolution dated 2.12.1975 read with norms dated 31.7.1990/1.8.1980 at Annexure "G" and in view of the uncontroverted averments made in the

petition, it is clear that the petitioner's case would fall under norm No. 5. The petitioner's father expired on 7.11.1988 and within less than two months the petitioner's mother Smt. Savitaben remarried and started residing with her new husband. The petitioner's elder brother was already employed but staying separately and, therefore, the petitioner was the only dependent of the deceased employee who could claim compassionate appointment if the other conditions for such appointment were satisfied particularly the condition about the indigent circumstance. In view of the uncontroverted fact that the petitioner is unemployed and does not have any source of income except intermittent casual work, both the conditions in the administrator's resolution dated 2.12.1975 must be treated to have been satisfied, namely, no member in the family of the deceased employee is earning and the family is in indigent circumstances. Looking to the aforesaid norms and particularly norm No. 5, it must be held that scope of family of the deceased i.e. the dependents of the deceased would be confined to the petitioner alone. The petitioner fulfils the aforesaid conditions and, therefore, the petitioner is entitled to get compassionate appointment.

6. Looking to the fact that the petitioner's application was rejected and the petitioner has been required to wait for the last eight years, it would be just and proper to direct the respondent to give the petitioner appointment on compassionate ground within a stipulated time limit.

7. In the result, the petition is allowed. The impugned decision dated 18.8.1980 (Annexure "E") is quashed and set aside as illegal and the respondent is directed to appoint the petitioner on compassionate ground in the Municipal services as expeditiously as possible and in any case within two months from the date of receipt of the writ of this Court or a certified copy of this judgement, whichever is earlier.

Rule is made absolute with no order as to costs.

Sd/-

(M.S. Shah, J.)

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